

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FN 2010-092717

04/21/2011

HONORABLE DAVID B. GASS

CLERK OF THE COURT
L. Nevenhoven
Deputy

IN RE THE MARRIAGE OF
SHERRY ANN OWENS

SHERRY ANN OWENS
9619 E IDAHO AVE
MESA AZ 85209

AND

JEFFRY DUFF OWENS

JANET R FEELEY

DOCKET-FAMILY COURT-SE
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION OF MARRIAGE

Courtroom 301 - SEF

2:42 p.m. This is the time set for Trial to the Court regarding the *Petition for Dissolution of a Non-Covenant Marriage* filed by Petitioner on September 16, 2010, and the *Response to Petition for Dissolution of a Non-Covenant Marriage Without Children* filed by Respondent on October 12, 2010. Petitioner, Sherry Owens, is present on her own behalf. Respondent, Jeffry Owens, is present and represented by above-named counsel, Janet Feeley.

A recording of this proceeding is being made by audio and/or videotape in lieu of a court reporter.

Discussion is held.

Sherry Owens and Jeffry Owens are sworn and testify.

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Jurisdictional testimony is provided by Sherry Owens.

The Court is advised that the parties have reached a full agreement on the issues, which is more fully set forth on the record.

The parties both testify that they have heard and understood the agreement as dictated in the record, and that this is, in fact, their agreement.

THE COURT FINDS that the agreement entered into between the parties is not unfair and is reasonable.

IT IS ORDERED approving the agreement of the parties as a binding agreement pursuant to Rule 69, *Arizona Rules of Family Law Procedure*, to be included in the final Decree entered herein.

THE COURT FINDS as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on March 1, 2011. By operation of law, the marital community is deemed to have terminated when the Response was filed on October 12, 2010.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- E. There are no minor children common to the parties.
- F. Wife is not pregnant.
- G. This was not a covenant marriage.
- H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts.

Based on the above,

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DISSOLUTION OF MARRIAGE

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

SPOUSAL MAINTENANCE

Neither party has asked for spousal maintenance under A.R.S. § 25-319(A).

IT IS THEREFORE ORDERED that neither Husband nor Wife is awarded spousal maintenance.

DIVISION OF PROPERTY AND DEBTS

Community/Sole and Separate Property Claims and Debts

In a proceeding for dissolution of marriage, the court shall divide any disputed property in accordance with the property's character. Property is characterized by the time of its acquisition. If acquired by either spouse before marriage or acquired during marriage by gift, devise, or descent, property is characterized as separate property. A.R.S. § 25-213(A). Under Arizona law, the court shall assign each spouse's sole and separate property to that spouse. A.R.S. § 25-318(A).

If acquired by either spouse during marriage, property is characterized as community property (with the exceptions of property acquired by gift, devise, or descent). A.R.S. § 25-211(A). There is a presumption that any property acquired by either spouse during marriage is community property, unless demonstrated otherwise by clear and convincing evidence. *See Sommerfield v. Sommerfield*, 121 Ariz. 575, 578, 592 P.2d 771, 774 (1979). Moreover, any property acquired by either spouse outside of Arizona shall be deemed to be community property if such property would have been characterized as community property had it been initially acquired in Arizona. A.R.S. § 25-318(A).

Equitable Division

Under Arizona law, the court shall divide community property equitably, although not necessarily in kind, without any regard to marital misconduct. A.R.S. § 25-318(A). As a general presumption, equitable division requires that community property be divided substantially equally. *See Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997). However, the court may order an unequal division of community property in consideration of excessive or abnormal expenditures or the destruction, concealment, or fraudulent disposition of property. A.R.S. § 25-

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318(C).

When dividing property, the court may consider all related debts and obligations. A.R.S. § 25-318(B). To determine property's value, the court shall select a valuation date. The selection of this valuation date rests within the wide discretion of the trial court and shall be tested upon review by the fairness of the result. *See Sample v. Sample*, 152 Ariz. 239, 242-43, 731 P.2d 604, 607-08 (Ct. App. 1986).

Unequal Division of Property

In rare occasions, an unequal division of community property may be appropriate to achieve equity given a unique set of facts or circumstances. *See Toth*, 190 Ariz. at 221, 946 P.2d at 903 (unequal division of property was appropriate because one spouse contributed substantially disproportionate separate funds compared to the other's contribution); *see also Flower v. Flower*, 223 Ariz. 531, 531, 225 P.3d 588, 588 (Ct. App. 2010) (unequal division of property was appropriate because the parties incurred substantial community debt to benefit one spouse's separate property). *But see Inboden v. Inboden*, 223 Ariz. 542, 547, 225 P.3d 599, 604 (Ct. App. 2010) (vacating an order for the unequal division of property because each spouse had contributed separate funds to joint property).

Before ordering an unequal division of community property, the court shall consider all equitable factors, including: the length of the marriage, the contributions of each spouse to the community, the source of funds used to acquire the property to be divided, the allocation of debt, and any other factor that may affect the outcome. *See Inboden*, 223 Ariz. at 547, 225 P.3d at 604.

After considering all equitable factors,

THE COURT FURTHER FINDS that this case does not present a unique set of facts or circumstances. Therefore an unequal division of community property is inappropriate to achieve equity.

Based on the above,

Real Property

Marital Residence

THE COURT FINDS that the parties own a house at 9619 E. Idaho Avenue; Mesa, AZ 85209 (the marital residence) as community real property.

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IT IS ORDERED that Wife and Husband shall continue to own the marital residence as tenants in common with no rights of survivorship.

IT IS ORDERED that Wife will be awarded sole and exclusive use of the marital residence so long as she timely pays the mortgage, property tax, and insurance. During that time, Wife will be solely responsible for the mortgage, property tax, and insurance.

IT IS ORDERED that if on or after May 31, 2011, Wife cannot afford to pay the mortgage, property tax, and insurance, Wife shall give Husband written notice to that effect.

- Upon written notice to Husband that Wife cannot afford to pay the mortgage, property tax, and insurance or if Husband learns that Wife is in arrears on the mortgage, insurance, or property tax, Husband shall have sole decision making regarding the sale of the marital residence.
- If Wife remains in the marital residence after giving Husband notice or after Husband learns that Wife is in arrears on the mortgage, insurance, or property tax, Wife remains responsible for the mortgage, property tax, and insurance for the period of her occupancy. If Husband contributes towards the mortgage, property tax, or insurance during the time of Wife's occupancy, Husband shall be reimbursed for those expenses from Wife's share of the net proceeds for the sale of the marital residence before the net proceeds are released to Wife.
- If Wife vacates the marital residence and the marital residence is vacant, the parties shall be equally responsible for the payment of the mortgage, property tax, and insurance while the marital residence is vacant until it is sold. Each party shall be reimbursed for his or her payments from the other party's share of the net proceeds for the sale of the marital residence before the net proceeds are released.
- If Husband occupies the marital residence during any period after Wife gives Husband notice or after Husband learns that Wife is in arrears on the mortgage, insurance, or property tax, Husband shall be solely responsible for the mortgage, property tax, and insurance for the period of his occupancy. If Wife contributes towards the mortgage, property tax, or insurance during the time of Husband's occupancy, Wife shall be reimbursed for those expenses from Husband's share of the net proceeds for the sale of the marital residence before the net proceeds are released to Husband.
- If Wife continues to occupy the marital residence and remains current on the

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mortgage, property tax, and insurance, then on May 31, 2012 (and annually after that date), the parties shall discuss the sale of the marital residence and if either party notifies the other party in writing that the party wants the marital residence to be sold, it shall be sold. This unilateral notice of request to sell must be given by June 15.

Queen Creek Property

THE COURT FINDS that Husband owns 2186 W. Kristina Ave; Queen Creek, AZ 85142 as his sole and separate real property.

IT IS ORDERED awarding 2186 W. Kristina Ave; Queen Creek, AZ 85142 to Husband as his sole and separate property.

Personal Property

THE COURT FINDS that the parties generally have divided their personal property, which is more fully explained below. Some of Husband's miscellaneous personal property remains in the garage at the marital residence, including some tools and some car parts. In addition, the 2005 Cadillac has been sold. Husband currently has \$7,500.00 in community funds from the sale of the 2005 Cadillac.

IT IS ORDERED that Husband is awarded the miscellaneous personal property currently stored in the garage of the marital residence, including the tools and the car parts.

IT IS FURTHER ORDERED that Husband shall pay the \$7,500.00 proceeds from the sale of the 2005 Cadillac to Wife before the close of business on Friday, April 22, 2011.

Subject to the above,

IT IS ORDERED awarding to Husband as his sole and separate property, subject to any liens or encumbrances on the property, all vehicles (including the 2001 Honda, the 1987 Corvette, the 1967 Ford Mustang, the 1972 Datsun, and the 1973 Datsun), household furniture, furnishings and appliances, and other personal property currently in his possession, including all financial, investment, and retirement accounts in his sole name.

IT IS FURTHER ORDERED awarding to Wife as her sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings and appliances, and other personal property currently in her possession, including all financial, investment, and retirement accounts in her sole name.

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IT IS FURTHER ORDERED that any personal property that was the subject of previous orders and which has not been exchanged shall be exchanged on or before May 8, 2011.

Debts

THE COURT FINDS that the following community debts were identified:

- | | |
|--|--------------|
| 1. Bank of America Credit Card: | \$ 14,000.00 |
| 2. CitiBank Credit Card: | \$ 3,500.00 |
| 3. Bank of America,
Mortgage on marital residence | \$189,000.00 |

IT IS ORDERED that in fairly and allocating the community assets and the community debts, the Bank of America mortgage on the marital residence of approximately \$189,000.00 shall be allocated as outlined above.

IT IS ORDERED that in fairly and equitably allocating the remaining community assets and the community debts, Husband shall be solely responsible for the following:

- | | |
|---------------------------------|--------------|
| 1. Bank of America Credit Card: | \$ 14,000.00 |
| 2. CitiBank Credit Card: | \$ 3,500.00 |

IT IS ORDERED that in fairly and equitably allocating the community assets and the community debts, Wife shall be responsible for an equalization payment to Husband of \$5,000.00, which is addressed below.

IT IS FURTHER ORDERED as follows:

- Husband shall be solely responsible for any credit card or debt in his name incurred after service of the Complaint.
- Wife shall be solely responsible for any credit card or debt in her sole name incurred after service of the Complaint.
- Any community debts that were not identified at the time of the trial shall be divided equally between the parties.

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- Husband shall ensure that Wife's name is removed from all the credit accounts assigned to him in this Decree by December 31, 2011.
- Wife shall ensure that Husband's name is removed from all the credit accounts assigned to her in this Decree by December 31, 2011.
- Each party shall pay any debt incurred by him or her respectively since the date of service of the Complaint in this matter.
- Each party shall indemnify and hold harmless from any and all debts designated as the responsibility of that party by the terms set forth in this Decree.

Equalization

THE COURT FINDS that the above allocation of the real and personal property, when considered with the division of debt, is not fair and equitable under the circumstances and that the following further adjustments are necessary.

IT IS THEREFORE ORDERED that Wife shall be responsible for paying Husband \$5,000.00 in equalization for his assumption for the remaining community debts after consideration of the division of the real property, personal property, and other debts.

IT IS FURTHER ORDERED entering judgment against Sherry Ann Owens and in favor of Respondent Jeffrey Duff Owens, in the amount of \$5,000.00, plus interest at the legal rate of ten percent (10%) per annum, for equalization of the allocation of real and personal property, when considered with the division of debt.

IT IS FURTHER ORDERED that if Wife has not satisfied this judgment before the marital residence is sold, then the judgment together with any accrued interest shall be paid to Husband out of Wife's share of the net proceeds for the sale of the marital residence before the net proceeds are released to Wife.

RESTORATION OF NAME

Wife declines on the record to have her name restored.

IT IS ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

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IT IS FURTHER ORDERED taking the matter of attorney's fees and costs under advisement.

3:37 p.m. Matter concludes.

LATER:

ATTORNEY FEES AND COSTS

Husband has requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

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D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Upon consideration of the foregoing,

THE COURT FINDS that there is no substantial disparity of financial resources between the parties.

THE COURT FURTHER FINDS that neither Wife nor Husband acted unreasonably in the litigation.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) do not apply.

IT IS THEREFORE ORDERED denying Husband's request for attorney fees and costs.

IT IS FURTHER ORDERED that each party shall bear his or her own attorney fees and costs.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

/ s / HONORABLE DAVID B. GASS

JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.